

105TH CONGRESS
1ST SESSION

S. 645

To amend the Federal Water Pollution Control Act to improve the enforcement and compliance programs.

IN THE SENATE OF THE UNITED STATES

APRIL 24, 1997

Mr. LAUTENBERG (for himself and Mr. TORRICELLI) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To amend the Federal Water Pollution Control Act to improve the enforcement and compliance programs.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Clean Water Enforce-
5 ment and Compliance Improvement Act of 1997”.

6 **SEC. 2. FINDINGS.**

7 (a) IN GENERAL.—Congress finds that—

8 (1) a significant number of persons who have
9 been issued permits under section 402 of the Fed-

1 eral Water Pollution Control Act are in violation of
2 such permits;

3 (2) current enforcement programs of the Ad-
4 ministrators of the Environmental Protection Agency
5 and the States fail to address violations of such per-
6 mits in a timely and effective manner;

7 (3) full, accurate and prompt reporting of pos-
8 sible violations of the Federal Water Pollution Con-
9 trol Act is necessary for implementation and well
10 served by assuring that good faith reporters of pos-
11 sible violations are protected against adverse person-
12 nel actions;

13 (4) often violations of such permits continue for
14 a considerable period of time, yielding significant
15 economic benefits for the violator and thus penaliz-
16 ing similar facilities which act lawfully;

17 (5) penalties assessed and collected by the Ad-
18 ministrators from violators of such permits are often
19 less than the economic benefit gained by the violator;

20 (6) swift and timely enforcement by the Admin-
21 istrator and the States of violations of such permits
22 is necessary to increase levels of compliance with
23 such permits; and

24 (7) actions of private citizens have been effec-
25 tive in enforcing such permits and directing funds to

1 environmental mitigation projects with over \$12.8
2 million in penalties and interest having been recovered and deposited with the Treasury of the United
3 States over the fiscal years 1990 through 1994.

5 (b) FINDING WITH RESPECT TO HARM CAUSED BY
6 VIOLATIONS.—Section 101 of the Federal Water Pollution
7 Control Act (33 U.S.C. 1251) is amended by adding at
8 the end the following:

9 “(h) FINDING WITH RESPECT TO HARM CAUSED BY
10 VIOLATIONS.—Congress finds that a discharge which re-
11 sults in a violation of this Act or a regulation, standard,
12 limitation, requirement, or order issued pursuant to this
13 Act interferes with the restoration and maintenance of the
14 chemical, physical, and biological integrity of any waters
15 into which the discharge flows (either directly or through
16 a publicly owned treatment works), including any waters
17 into which the receiving waters flow, and, therefore, harms
18 those who use or enjoy such waters and those who use
19 or enjoy nearby lands or aquatic resources associated with
20 those waters.

21 “(i) FINDING WITH RESPECT TO CITIZEN SUITS.—
22 Congress finds that citizen suits are a valuable means of
23 enforcement of this Act and urges the Administrator to
24 take actions to encourage such suits, including providing
25 information concerning violators to citizen groups to assist

1 them in bringing suits, providing expert witnesses and
 2 other evidence with respect to such suits, and filing amicus
 3 curiae briefs on important issues related to such suits.”.

4 **SEC. 3. VIOLATIONS OF REQUIREMENTS OF LOCAL CON-**
 5 **TROL AUTHORITIES.**

6 Section 307(d) of Federal Water Pollution Control
 7 Act (33 U.S.C. 1317(d)) is amended to read as follows:

8 “(d) VIOLATIONS.—After the date on which (1) any
 9 effluent standard or prohibition or pretreatment standard
 10 or requirement takes effect under this section, or (2) any
 11 requirement imposed in a pretreatment program under
 12 section 402(a)(3) or 402(b)(8) of this Act takes effect, it
 13 shall be unlawful for any owner or operator of any source
 14 to operate such source in violation of the effluent stand-
 15 ard, prohibition, pretreatment standard, or requirement.”.

16 **SEC. 4. INSPECTIONS, MONITORING, AND PROVIDING IN-**
 17 **FORMATION.**

18 (a) APPLICABILITY OF REQUIREMENTS.—Section
 19 308(a) of the Federal Water Pollution Control Act (33
 20 U.S.C. 1318(a)) is amended by striking “the owner or op-
 21 erator of any point source” and inserting “a person sub-
 22 ject to a requirement of this Act”.

23 (b) PUBLIC ACCESS TO INFORMATION.—The first
 24 sentence of section 308(b) of such Act is amended—

1 (1) by inserting “(including information con-
 2 tained in the Permit Compliance System of the En-
 3 vironmental Protection Agency)” after “obtained
 4 under this section”;

5 (2) by inserting “made” after “shall be”; and

6 (3) by inserting “by computer telecommuni-
 7 cation and other means for a period of at least 10
 8 years” after “public” the first place it appears.

9 (c) PUBLIC INFORMATION.—Section 308 of such Act
 10 is further amended by adding at the end the following:

11 “(e) PUBLIC INFORMATION.—

12 “(1) POSTING OF NOTICE OF POLLUTED WA-
 13 TERS.—At each major point of public access (includ-
 14 ing, at a minimum, beaches, parks, recreation areas,
 15 marinas, and boat launching areas) to a body of
 16 navigable water that does not meet an applicable
 17 water quality standard or that is subject to a fishing
 18 and shell fishing ban, advisory, or consumption re-
 19 striction (issued by a Federal, State, or local author-
 20 ity) due to fish or shellfish contamination, the State
 21 within which boundaries all or any part of such body
 22 of water lies shall, either directly or through local
 23 authorities, post and maintain a clearly visible sign
 24 which—

1 “(A) indicates the water quality standard
2 that is being violated or the nature and extent
3 of the restriction on fish or shellfish consump-
4 tion, as the case may be;

5 “(B) includes (i) information on the envi-
6 ronmental and health effects associated with
7 the failure to meet such standard or with the
8 consumption of fish or shellfish subject to the
9 restriction, and (ii) a phone number for obtain-
10 ing additional information relating to the viola-
11 tion and restriction; and

12 “(C) will be maintained until the body of
13 water is in compliance with the water quality
14 standard or until all fish and shellfish consump-
15 tion restrictions are terminated with respect to
16 the body of water, as the case may be.

17 “(2) NOTICE OF DISCHARGES TO NAVIGABLE
18 WATERS.—Except for permits issued to municipali-
19 ties for discharges composed entirely of stormwater
20 under section 402 of this Act, each permit issued
21 under section 402 by the Administrator or by a
22 State shall ensure compliance with the following
23 requirements:

24 “(A) Every permittee shall conspicuously
25 maintain at all public entrances to the facility

1 a clearly visible sign which indicates that the
2 facility discharges pollutants into navigable wa-
3 ters and the location of such discharges; the
4 name, business address, and phone number of
5 the permittee; the permit number; and a loca-
6 tion at which a copy of the permit and public
7 information required by this paragraph is main-
8 tained and made available for inspection or a
9 phone number for obtaining such information.

10 “(B) Each permittee which is a publicly
11 owned treatment works shall include in each
12 quarterly mailing of a bill to each customer of
13 the treatment works information which indi-
14 cates that the treatment works discharges pol-
15 lutants into the navigable waters and the loca-
16 tion of each of such discharges; the name, busi-
17 ness address and phone number of the permit-
18 tee; the permit number; a location at which a
19 copy of the permit and public information re-
20 quired by this paragraph is maintained and
21 made available for inspection or a phone num-
22 ber for obtaining such information; and a list of
23 all violations of the requirements of the permit
24 by the treatment works over the preceding 12-
25 month period.

1 “(3) REGULATIONS.—

2 “(A) ISSUANCE.—The Administrator—

3 “(i) not later than 6 months after the
4 date of the enactment of this subsection,
5 shall propose regulations to carry out this
6 subsection; and

7 “(ii) not later than 18 months after
8 such date of enactment, shall issue such
9 regulations.

10 “(B) CONTENT.—The regulations issued to
11 carry out this subsection shall establish—

12 “(i) uniform requirements and proce-
13 dures for identifying and posting bodies of
14 water under paragraph (1);

15 “(ii) minimum information to be in-
16 cluded in signs posted and notices issued
17 pursuant to this subsection;

18 “(iii) uniform requirements and proce-
19 dures for fish and shellfish sampling and
20 analysis;

21 “(iv) uniform requirements for deter-
22 mining the nature and extent of fish and
23 shellfish bans, advisories, and consumption
24 restrictions which—

1 “(I) address cancer and noncan-
2 cer human health risks;

3 “(II) take into account the ef-
4 fects of all fish and shellfish contami-
5 nants, including the cumulative and
6 synergistic effects;

7 “(III) assure the protection of
8 subpopulations who consume higher
9 than average amounts of fish and
10 shellfish or are particularly susceptible
11 to the effects of such contamination;

12 “(IV) address race, gender, eth-
13 nic composition, or social and eco-
14 nomic factors, based on the latest
15 available studies of national or re-
16 gional consumption by and impacts on
17 such subpopulations unless more reli-
18 able site-specific data is available;

19 “(V) are based on a margin of
20 safety that takes into account the un-
21 certainties in human health impacts
22 from such contamination; and

23 “(VI) evaluate assessments of
24 health risks of contaminated fish and
25 shellfish that are used in pollution

1 control programs developed by the Ad-
 2 ministrator under this Act.”.

3 (d) STATE REPORTS.—Section 305(b)(1) of such Act
 4 (33 U.S.C. 1315(b)(1)) is amended—

5 (1) by striking “and” at the end of subpara-
 6 graph (D);

7 (2) by striking the period at the end of sub-
 8 paragraph (E) and inserting “; and”; and

9 (3) by adding at the end the following:

10 “(F) a list identifying bodies of water for
 11 which signs were posted under section
 12 308(e)(1) in the preceding year and the reason
 13 or reasons for such posting.”.

14 **SEC. 5. CIVIL PENALTIES.**

15 (a) ENFORCEMENT OF LOCAL PRETREATMENT RE-
 16 QUIREMENTS.—

17 (1) COMPLIANCE ORDERS.—

18 (A) INITIAL ACTION.—Section 309(a)(1) of
 19 the Federal Water Pollution Control Act (33
 20 U.S.C. 1319(a)(1)) is amended by inserting
 21 after “404 of this Act,” the following: “or is in
 22 violation of any requirement imposed in a
 23 pretreatment program approved under section
 24 402(a)(3) or 402(b)(8) of this Act,”.

1 (B) ISSUANCE OF ORDERS.—Section
 2 309(a)(3) of such Act is amended by inserting
 3 after “404 of this Act by a State,” the follow-
 4 ing: “or is in violation of any requirement im-
 5 posed in a pretreatment program approved
 6 under section 402(a)(3) or 402(b)(8) of this
 7 Act,”.

8 (2) CRIMINAL PENALTIES.—Section
 9 309(c)(3)(A) of such Act is amended by inserting
 10 after “Army or by a State,” the following: “or know-
 11 ingly violates any requirement imposed in a
 12 pretreatment program approved under section
 13 402(a)(3) or 402(b)(8) of this Act,”.

14 (3) ADMINISTRATIVE PENALTIES.—Section
 15 309(g)(1)(A) of such Act is amended by inserting
 16 after “404 by a State,” the following: “or has vio-
 17 lated any requirement imposed in a pretreatment
 18 program approved under section 402(a)(3) or
 19 402(b)(8) of this Act or an order issued by the Ad-
 20 ministrator under subsection (a) of this section,”.

21 (b) TREATMENT OF SINGLE OPERATIONAL UP-
 22 SETS.—

23 (1) CRIMINAL PENALTIES.—Section 309(c) of
 24 such Act is amended by striking paragraph (5) and

1 redesignating paragraphs (6) and (7) as paragraphs
2 (5) and (6), respectively.

3 (2) CIVIL PENALTIES.—Section 309(d) of such
4 Act is amended by striking the last sentence.

5 (3) ADMINISTRATIVE PENALTIES.—Section
6 309(g)(3) of such Act is amended by striking the
7 last sentence.

8 (c) USE OF CIVIL PENALTIES FOR MITIGATION
9 PROJECTS.—

10 (1) IN GENERAL.—Section 309(d) of such Act
11 is amended by inserting after the second sentence
12 the following: “The court may, in the court’s discre-
13 tion, order that a civil penalty be used for carrying
14 out mitigation projects which are consistent with the
15 purposes of this Act and which enhance the public
16 health or environment.”.

17 (2) CONFORMING AMENDMENT.—Section
18 505(a) of such Act (33 U.S.C. 1365(a)) is amended
19 by inserting before the period at the end of the last
20 sentence the following: “, including ordering the use
21 of a civil penalty for carrying out mitigation projects
22 in accordance with such section 309(d)”.

23 (d) DETERMINATION OF AMOUNT OF PENALTIES.—

24 (1) CIVIL PENALTIES.—The second sentence of
25 section 309(d) of such Act (33 U.S.C. 1319(d)) is

1 amended by inserting “the amount of any penalty
 2 previously imposed on the violator by a court or ad-
 3 ministrative agency for the same violation or viola-
 4 tions,” after “economic impact of the penalty on the
 5 violator,”.

6 (2) ADMINISTRATIVE PENALTIES.—Section
 7 309(g)(3) of such Act is amended—

8 (A) by striking “or savings”; or

9 (B) by inserting “the amount of any pen-
 10 alty previously imposed on the violator by a
 11 court or administrative agency for the same vio-
 12 lation or violations,” after “resulting from the
 13 violation,”.

14 (e) LIMITATION ON DEFENSES.—Section 309(g)(1)
 15 of such Act is amended by adding at the end the following:
 16 “In a proceeding to assess or review a penalty under this
 17 subsection, the adequacy of consultation between the Ad-
 18 ministrator or the Secretary, as the case may be, and the
 19 State shall not be a defense to assessment or enforcement
 20 of such penalty.”.

21 (f) AMOUNTS OF ADMINISTRATIVE CIVIL PEN-
 22 ALTIES.—

23 (1) GENERAL RULE.—Section 309(g)(2) of
 24 such Act is amended to read as follows:

1 “(2) AMOUNT OF PENALTIES; NOTICE; HEAR-
2 ING.—

3 “(A) MAXIMUM AMOUNT OF PENALTIES.—

4 The amount of a civil penalty under paragraph
5 (1) may not exceed \$25,000 per violation per
6 day for each day during which the violation
7 continues.

8 “(B) WRITTEN NOTICE.—Before issuing
9 an order assessing a civil penalty under this
10 subsection, the Administrator or the Secretary,
11 as the case may be, shall give to the person to
12 be assessed the penalty written notice of the
13 Administrator’s or Secretary’s proposal to issue
14 the order and the opportunity to request, within
15 30 days of the date the notice is received by
16 such person, a hearing on the proposed order.

17 “(C) HEARINGS NOT ON THE RECORD.—If
18 the proposed penalty does not exceed \$25,000,
19 the hearing shall not be subject to section 554
20 or 556 of title 5, United States Code, but shall
21 provide a reasonable opportunity to be heard
22 and to present evidence.

23 “(D) HEARINGS ON THE RECORD.—If the
24 proposed penalty exceeds \$25,000, the hearing
25 shall be on the record in accordance with sec-

1 tion 554 of title 5, United States Code. The
 2 Administrator and the Secretary may issue
 3 rules for discovery procedures for hearings
 4 under this subparagraph.”.

5 (2) CONFORMING AMENDMENTS.—Section
 6 309(g) of such Act is amended—

7 (A) in paragraph (1) by striking “class I
 8 civil penalty or a class II”;

9 (B) in the second sentence of paragraph
 10 (4)(C) by striking “(2)(A) in the case of a class
 11 I civil penalty and paragraph (2)(B) in the case
 12 of a class II civil penalty” and inserting “(2)”;
 13 and

14 (C) in the first sentence of paragraph (8)
 15 by striking “assessment—” and all that follows
 16 through “by filing” and inserting “assessment
 17 in the United States District Court for the Dis-
 18 trict of Columbia or in the district in which the
 19 violation is alleged to have occurred by filing”.

20 (g) STATE ENFORCEMENT ACTIONS AS BAR TO FED-
 21 ERAL ENFORCEMENT ACTIONS.—Section 309(g)(6)(A) of
 22 such Act is amended—

23 (1) by inserting “or” after the comma at the
 24 end of clause (i);

25 (2) by striking clause (ii); and

1 (3) by redesignating clause (iii) as clause (ii)
2 and in such clause—

3 (A) by striking “, the Secretary, or the
4 State” and inserting “or the Secretary”; and

5 (B) by striking “or such comparable State
6 law, as the case may be,”.

7 (h) RECOVERY OF ECONOMIC BENEFIT.—Section
8 309 of such Act is amended by adding at the end the
9 following:

10 “(h) RECOVERY OF ECONOMIC BENEFIT.—

11 “(1) GENERAL RULE.—Notwithstanding any
12 other provision of this section, any civil penalty as-
13 sessed and collected under this section must be in an
14 amount which is not less than the amount of the
15 economic benefit (if any) resulting from the violation
16 for which the penalty is assessed.

17 “(2) REGULATIONS.—Not later than 2 years
18 after the date of the enactment of this subsection,
19 the Administrator shall issue regulations establishing
20 a methodology for calculating the economic benefits
21 or savings resulting from violations of this Act.
22 Pending issuance of such regulations, this subsection
23 shall be in effect and economic benefits shall be cal-
24 culated for purposes of paragraph (1) on a case-by-
25 case basis.”.

1 (i) LIMITATION ON COMPROMISES.—Such section
 2 309 is further amended by adding at the end the following:

3 “(i) LIMITATION ON COMPROMISES OF CIVIL PEN-
 4 ALTIES.—Notwithstanding any other provision of this sec-
 5 tion, the amount of a civil penalty assessed under this sec-
 6 tion may not be compromised below the amount deter-
 7 mined by adding—

8 “(1) the minimum amount required for recovery
 9 of economic benefit under subsection (h), to

10 “(2) 50 percent of the difference between the
 11 amount of the civil penalty assessed and such mini-
 12 mum amount.”.

13 (j) MINIMUM AMOUNT FOR SERIOUS VIOLATIONS.—
 14 Such section 309 is further amended by adding at the end
 15 the following:

16 “(j) MINIMUM CIVIL PENALTIES FOR SERIOUS VIO-
 17 LATIONS AND SIGNIFICANT NONCOMPLIERS.—

18 “(1) SERIOUS VIOLATIONS.—Notwithstanding
 19 any other provision of this section (other than para-
 20 graph (2)), the minimum civil penalty which shall be
 21 assessed and collected under this section from a per-
 22 son—

23 “(A) for a discharge from a point source of
 24 a hazardous pollutant which exceeds or other-
 25 wise violates any applicable effluent limitation

1 established by or under this Act by 20 percent
2 or more, or

3 “(B) for a discharge from a point source
4 of a pollutant (other than a hazardous pollut-
5 ant) which exceeds or otherwise violates any ap-
6 plicable effluent limitation established by or
7 under this Act by 40 percent or more,
8 shall be \$1,000 for the first such violation in a 180-
9 day period.

10 “(2) SIGNIFICANT NONCOMPLIERS.—Notwith-
11 standing any other provision of this section, the min-
12 imum civil penalty which shall be assessed and col-
13 lected under this section from a person—

14 “(A) for the second or more discharge in
15 a 180-day period from a point source of a haz-
16 ardous pollutant which exceeds or otherwise vio-
17 lates any applicable effluent limitation estab-
18 lished by or under this Act by 20 percent or
19 more,

20 “(B) for the second or more discharge in
21 a 180-day period from a point source of a pol-
22 lutant (other than a hazardous pollutant) which
23 exceeds or otherwise violates any applicable ef-
24 fluent limitation established by or under this
25 Act by 40 percent or more,

1 “(C) for the fourth or more discharge in a
2 180-day period from a point source of any pol-
3 lutant which exceeds or otherwise violates the
4 same effluent limitation, or

5 “(D) for not filing in a 180-day period 2
6 or more reports in accordance with section
7 402(r)(1),
8 shall be \$5,000 for each of such violations.

9 “(3) MANDATORY INSPECTIONS FOR SIGNIFI-
10 CANT NONCOMPLIERS.—The Administrator shall
11 identify any person described in paragraph (2) as a
12 significant noncomplier and shall conduct an inspec-
13 tion described in section 402(q) of this Act of the fa-
14 cility at which the violations were committed. Such
15 inspections shall be conducted at least once in the
16 180-day period following the date of the most recent
17 violation which resulted in such person being identi-
18 fied as a significant noncomplier.

19 “(4) ANNUAL REPORTING.—The Administrator
20 shall transmit to Congress and to the Governors of
21 the States, and shall publish in the Federal Register,
22 on an annual basis a list of all persons identified as
23 significant noncompliers under paragraph (3) in the
24 preceding calendar year and the violations which re-
25 sulted in such classifications.

1 “(5) HAZARDOUS POLLUTANT DEFINED.—For
 2 purposes of this subsection, the term ‘hazardous pol-
 3 lutant’ has the meaning the term ‘hazardous sub-
 4 stance’ has under subsection (c)(6) of this section.”.

5 (k) STATE PROGRAM.—Section 402(b)(7) of such Act
 6 (33 U.S.C. 1342(b)(7)) is amended to read as follows:

7 “(7) To abate violations of the permit or the
 8 permit program which shall include, beginning on
 9 the last day of the 2-year period beginning on the
 10 date of the enactment of the Clean Water Compli-
 11 ance and Enforcement Improvement Amendments
 12 Act of 1995, a penalty program comparable to the
 13 Federal penalty program under section 309 of this
 14 Act and which shall include at a minimum criminal,
 15 civil, and civil administrative penalties, and may in-
 16 clude other ways and means of enforcement, which
 17 the State demonstrates to the satisfaction of the Ad-
 18 ministrator are equally effective as the Federal pen-
 19 alty program;”.

20 (l) FEDERAL PROCUREMENT COMPLIANCE INCEN-
 21 TIVE.—Section 508(a) of such Act (33 U.S.C. 1368(a))
 22 is amended by inserting after the second comma “or who
 23 is identified under section 309(j)(3) of this Act,”.

1 **SEC. 6. NATIONAL POLLUTANT DISCHARGE ELIMINATION**
 2 **PERMITS.**

3 (a) WITHDRAWAL OF STATE PROGRAM APPROVAL.—
 4 Section 402(b) of the Federal Water Pollution Control Act
 5 (33 U.S.C. 1342(b)) is amended by striking “unless he
 6 determines that adequate authority does not exist:” and
 7 inserting the following: “only when he determines that
 8 adequate authority exists and shall withdraw program ap-
 9 proval whenever he determines that adequate authority no
 10 longer exists:”.

11 (b) JUDICIAL REVIEW OF RULINGS ON APPLICA-
 12 TIONS FOR STATE PERMITS.—Section 402(b)(3) of such
 13 Act is amended by inserting “and to ensure that any inter-
 14 ested person who participated in the public comment proc-
 15 ess and any other person who could obtain judicial review
 16 of that action under any other applicable law has the right
 17 to judicial review of such ruling” before the semicolon at
 18 the end.

19 (c) INSPECTIONS FOR MAJOR INDUSTRIAL AND MU-
 20 NICIPAL DISCHARGERS.—Section 402(b) of such Act is
 21 amended—

22 (1) by striking “and” at the end of paragraph
 23 (8);

24 (2) by striking the period at the end of para-
 25 graph (9) and inserting a semicolon; and

26 (3) by adding at the end the following:

1 “(10) To ensure that any permit for a dis-
2 charge from a major industrial or municipal facility,
3 as defined by the Administrator by regulation, in-
4 cludes conditions under which such facility will be
5 subject to at least annual inspections by the State
6 in accordance with subsection (q) of this section;”.

7 (d) MONTHLY REPORTS FOR SIGNIFICANT INDUS-
8 TRIAL USERS OF POTWS.—Section 402(b) of such Act
9 is further amended by adding at the end the following:

10 “(11) To ensure that any permit for a dis-
11 charge from a publicly owned treatment works in the
12 State includes conditions under which the treatment
13 works will require any significant industrial user of
14 the treatment works, as defined by the Adminis-
15 trator by regulation, to prepare and submit to the
16 Administrator, the State, and the treatment works a
17 monthly discharge monitoring report as a condition
18 to using the treatment works;”.

19 (e) PERMITS REQUIRED FOR INTRODUCTION OF
20 POLLUTANTS INTO POTWS.—Section 402(b) of such Act
21 is further amended by adding at the end the following:

22 “(12) To ensure that, after the last day of the
23 2-year period beginning on the date of the enact-
24 ment of this paragraph, any significant industrial
25 user, or other source designated by the Adminis-

1 trator, introducing a pollutant into a publicly owned
 2 treatment works has, and operates in accordance
 3 with, a permit issued by the treatment works or the
 4 State for introduction of such pollutant; and”.

5 (f) GRANTING OF AUTHORITY TO POTWS FOR IN-
 6 SPECTIONS AND PENALTIES.—Section 402(b) of such Act
 7 is further amended by adding at the end the following:

8 “(13) To ensure that the State will grant to
 9 publicly owned treatment works in the State, not
 10 later than 3 years after the date of the enactment
 11 of this paragraph, authority, power, and responsibil-
 12 ity to conduct inspections under subsection (q) of
 13 this section and to assess and collect civil penalties
 14 and civil administrative penalties under paragraph
 15 (7) of this subsection.”.

16 (g) INSPECTION.—Section 402 of such Act is amend-
 17 ed by adding at the end the following:

18 “(q) INSPECTION.—

19 “(1) GENERAL RULE.—Each permit for a dis-
 20 charge into the navigable waters or introduction of
 21 pollutants into a publicly owned treatment works is-
 22 sued under this section shall include conditions
 23 under which the effluent being discharged will be
 24 subject to random inspections in accordance with
 25 this subsection by the Administrator or the State, in

1 the case of a State permit program under this
2 section.

3 “(2) MINIMUM STANDARDS.—Not later than 6
4 months after the date of enactment of this sub-
5 section, the Administrator shall establish minimum
6 standards for inspections under this subsection.
7 Such standards shall require, at a minimum, the fol-
8 lowing:

9 “(A) An annual representative sampling by
10 the Administrator or the State, in the case of
11 a State permit program under this section, of
12 the effluent being discharged; except that if the
13 discharge is not from a major industrial or mu-
14 nicipal facility such sampling shall be conducted
15 at least once every 3 years.

16 “(B) An analysis of all samples collected
17 under subparagraph (A) by a Federal or State
18 owned and operated laboratory or a State ap-
19 proved laboratory, other than one that is being
20 used by the permittee or that is directly or indi-
21 rectly owned, operated, or managed by the
22 permittee.

23 “(C) An evaluation of the maintenance
24 record of any treatment equipment of the
25 permittee.

1 “(D) An evaluation of the sampling tech-
2 niques used by the permittee.

3 “(E) A random check of discharge mon-
4 itoring reports of the permittee for each 12-
5 month period for the purpose of determining
6 whether or not such reports are consistent with
7 the applicable analyses conducted under sub-
8 paragraph (B).

9 “(F) An inspection of the sample storage
10 facilities and techniques of the permittee.”.

11 (h) REPORTING.—Section 402 of such Act is further
12 amended by adding at the end the following:

13 “(r) REPORTING.—

14 “(1) GENERAL RULE.—Each person holding a
15 permit issued under this section which is determined
16 by the Administrator to be a major industrial or mu-
17 nicipal discharger of pollutants into the navigable
18 waters shall prepare and submit to the Adminis-
19 trator a monthly discharge monitoring report. Any
20 other person holding a permit issued under this sec-
21 tion shall prepare and submit to the Administrator
22 quarterly discharge monitoring reports or more fre-
23 quent discharge monitoring reports if the Adminis-
24 trator requires. Such reports shall contain, at a min-

1 imum, such information as the Administrator shall
2 require by regulation.

3 “(2) REPORTING OF HAZARDOUS DIS-
4 CHARGES.—

5 “(A) GENERAL RULE.—If a discharge
6 from a point source for which a permit is issued
7 under this section exceeds an effluent limitation
8 contained in such permit which is based on an
9 acute water quality standard or any other dis-
10 charge which may cause an exceedance of an
11 acute water quality standard or otherwise is
12 likely to cause injury to persons or damage to
13 the environment or to pose a threat to human
14 health and the environment, the person holding
15 such permit shall notify the Administrator and
16 the affected States and municipalities, in writ-
17 ing, of such discharge not later than 2 hours
18 after the later of the time at which such dis-
19 charge commenced or the time at which the
20 permittee knew or had reason to know of such
21 discharge.

22 “(B) SPECIAL RULE FOR HAZARDOUS POL-
23 LUTANTS.—If a discharge described in subpara-
24 graph (A) is of a hazardous pollutant (as de-
25 fined in section 309(j) of this Act), the person

1 holding such permit shall provide the Adminis-
2 trator with such additional information on the
3 discharge as may be required by the Adminis-
4 trator. Such additional information shall be
5 provided to the Administrator within 24 hours
6 after the later of the time at which such dis-
7 charge commenced or the time at which the
8 permittee became aware of such discharge.
9 Such additional information shall include, at a
10 minimum, an estimate of the danger posed by
11 the discharge to the environment, whether the
12 discharge is continuing, and the measures taken
13 or being taken (i) to remediate the problem
14 caused by the discharge and any damage to the
15 environment, and (ii) to avoid a repetition of
16 the discharge.

17 “(3) SIGNATURE.—All reports filed under para-
18 graph (1) must be signed and dated by the highest
19 ranking official having day-to-day managerial and
20 operational responsibility for the facility at which the
21 discharge occurs or, in the absence of such person,
22 by another responsible high ranking official at such
23 facility. Such highest ranking official shall be re-
24 sponsible for the accuracy of all information con-
25 tained in such reports; except that such highest

1 ranking official may file with the Administrator
 2 amendments to any such report if the report was
 3 signed in the absence of the highest ranking official
 4 by another high ranking official and if such amend-
 5 ments are filed within 7 days of the return of the
 6 highest ranking official.”.

7 (i) LIMITATION ON ISSUANCE OF PERMITS TO SIG-
 8 NIFICANT NONCOMPLIERS.—Section 402 of such Act is
 9 further amended by adding at the end the following:

10 “(s) SIGNIFICANT NONCOMPLIERS.—No permit may
 11 be issued under this section to any person (other than a
 12 publicly owned treatment works) identified under section
 13 309(j)(3) of this Act or to any other person owned or con-
 14 trolled by the identified person, owning or controlling the
 15 identified person, or under common control with the iden-
 16 tified person, until the Administrator or the State or
 17 States in which the violation or violations occur deter-
 18 mines that the condition or conditions giving rise to such
 19 violation or violations have been corrected. No permit ap-
 20 plication submitted after the date of the enactment of this
 21 subsection may be approved unless the application in-
 22 cludes a list of all violations of this Act by a person identi-
 23 fied under section 309(j) of this Act during the 3-year pe-
 24 riod preceding the date of submission of the application

1 and evidence indicating whether the underlying cause of
 2 each such violation has been corrected.”.

3 (j) APPLICABILITY.—The amendments made by this
 4 section shall apply to permits issued before, on, or after
 5 the date of the enactment of this Act; except that—

6 (1) with respect to permits issued before such
 7 date of enactment to a major industrial or municipal
 8 discharger, such amendments shall take effect on the
 9 last day of the 1-year period beginning on such date
 10 of enactment; and

11 (2) with respect to all other permits issued be-
 12 fore such date of enactment, such amendments shall
 13 take effect on the last day of the 2-year period be-
 14 ginning on such date of enactment.

15 **SEC. 7. EXPIRED STATE PERMITS.**

16 Section 402(d) of the Federal Water Pollution Con-
 17 trol Act (33 U.S.C. 1342(d)) is amended by adding at the
 18 end the following:

19 “(5) EXPIRED STATE PERMITS.—In any case in
 20 which—

21 “(A) a permit issued by a State for a dis-
 22 charge has expired,

23 “(B) the permittee has submitted an appli-
 24 cation to the State for a new permit for the dis-
 25 charge, and

1 “(C) the State has not acted on the appli-
 2 cation before the last day of the 18-month pe-
 3 riod beginning on the date the permit expired,
 4 the Administrator may issue a permit for the dis-
 5 charge under subsection (a).”.

6 **SEC. 8. COMPLIANCE SCHEDULE.**

7 Section 302(b)(2)(B) of the Federal Water Pollution
 8 Control Act (33 U.S.C. 1312(b)(2)(B)) is amended by
 9 adding at the end the following: “The Administrator may
 10 only issue a permit pursuant to this subparagraph for a
 11 period exceeding 2 years if the Administrator makes the
 12 findings described in clauses (i) and (ii) of this subpara-
 13 graph on the basis of a public hearing.”.

14 **SEC. 9. EMERGENCY POWERS.**

15 Section 504 of the Federal Water Pollution Control
 16 Act (33 U.S.C. 1364) is amended to read as follows:

17 **“SEC. 504. COMMUNITY PROTECTION.**

18 “(a) ISSUANCE OF ORDERS; COURT ACTION.—Not-
 19 withstanding any other provision of this Act, whenever the
 20 Administrator finds that, because of an actual or threat-
 21 ened direct or indirect discharge of a pollutant, there may
 22 be an imminent and substantial endangerment to the pub-
 23 lic health or welfare (including the livelihood of persons)
 24 or the environment, the Administrator may issue such or-
 25 ders or take such action as may be necessary to protect

1 public health or welfare or the environment and commence
 2 a suit (or cause it to be commenced) in the United States
 3 district court for the district where the discharge or threat
 4 occurs. Such court may grant such relief to abate the
 5 threat and to protect against the endangerment as the
 6 public interest and the equities require, enforce, and ad-
 7 judge penalties for disobedience to orders of the Adminis-
 8 trator issued under this section, and grant other relief ac-
 9 cording to the public interest and the equities of the case.

10 “(b) ENFORCEMENT OF ORDERS.—Any person who,
 11 without sufficient cause, violates or fails to comply with
 12 an order of the Administrator issued under this section,
 13 shall be liable for civil penalties to the United States in
 14 an amount not to exceed \$25,000 per day for each day
 15 on which such violation or failure occurs or continues.”.

16 **SEC. 10. CITIZEN SUITS.**

17 (a) SUITS FOR PAST VIOLATIONS.—Section 505 of
 18 the Federal Water Pollution Control Act (33 U.S.C. 1365)
 19 is amended—

- 20 (1) in subsection (a)(1) by inserting “to have
 21 violated (if there is evidence that the alleged viola-
 22 tions has been repeated) or” after “who is alleged”;
- 23 (2) in subsection (b)(1)(A)(ii) by striking “oc-
 24 curs” and inserting “has occurred or is occurring”;
- 25 and

1 (3) in subsection (f)(6) by inserting “has been
2 or” after “which”.

3 (b) TIME LIMIT.—Section 505(b)(1)(A) of such Act
4 is amended by striking “60 days” and inserting “30
5 days”.

6 (c) EFFECT OF JUDGMENTS ON CITIZEN SUITS.—
7 Section 505(b) of such Act is further amended—

8 (1) in paragraph (1)(B)—

9 (A) by striking “, or a State”; and

10 (B) by striking “right.” and inserting
11 “right and may obtain costs of litigation under
12 subsection (d), or”; and

13 (2) by adding at the end the following: “The
14 notice under paragraph (1)(A) need set forth only
15 violations which have been specifically identified in
16 the discharge monitoring reports of the alleged viola-
17 tor. An action by a State under subsection (a)(1)
18 may be brought at any time. No judicial action by
19 the Administrator or a State shall bar an action for
20 the same violation under subsection (a)(1) unless the
21 action is by the Administrator and meets the re-
22 quirements of this paragraph. No administrative ac-
23 tion by the Administrator or a State shall bar a
24 pending action commenced after February 4, 1987,
25 for the same violation under subsection (a)(1) unless

1 the action by the Administrator or a State meets
 2 the requirements of section 309(g)(6) of this Act.”.

3 (d) CONSENT JUDGMENTS.—Section 505(c)(3) of
 4 such Act is amended by adding at the end the following:
 5 “Consent judgments entered under this section may pro-
 6 vide that the civil penalties included in the consent judg-
 7 ment be used for carrying out mitigation projects in ac-
 8 cordance with section 309(d).”.

9 (e) PRETREATMENT REQUIREMENTS.—Section
 10 505(f)(4) of such Act is amended by striking “or
 11 pretreatment standards” and inserting “or pretreatment
 12 standard or requirement described in section 307(d)”.

13 (f) EFFLUENT STANDARD DEFINITION.—Section
 14 505(f)(6) of such Act is amended by inserting “narrative
 15 or mathematical” before “condition”.

16 (g) OFFERS OF JUDGMENT.—Section 505 of such
 17 Act is further amended by adding at the end the following:

18 “(g) APPLICABILITY OF OFFERS OF JUDGMENT.—
 19 Offers of judgment pursuant to Rule 68 of the Federal
 20 Rules of Civil Procedure shall not be applicable to actions
 21 brought under subsection (a)(1) of this section.”.

22 **SEC. 11. EMPLOYEE PROTECTION.**

23 Section 507 of the Federal Water Pollution Control
 24 Act (33 U.S.C. 1367) is amended—

1 (1) in subsection (e) by inserting “CONTINUING
2 EVALUATIONS” after “(e)”;

3 (2) by redesignating subsection (e) as sub-
4 section (f); and

5 (3) by striking subsections (a), (b), (c), and (d)
6 and inserting the following:

7 “(a) IN GENERAL.—No employer or other person
8 may harass, prosecute, hold liable, or discriminate against
9 any employee or other person because the person—

10 “(1) is assisting or demonstrating an intent to
11 assist in achieving compliance with any provision of
12 this Act (including a rule or regulation issued to
13 carry out this Act);

14 “(2) is refusing to violate or assist in the viola-
15 tion of any provision of this Act (including a rule or
16 regulation issued to carry out this Act);

17 “(3) has commenced, caused to be commenced,
18 or is about to commence a proceeding, has testified
19 or is about to testify at a proceeding, or has assisted
20 or participated or is about to assist or participate in
21 any manner in such a proceeding or in any other ac-
22 tion to carry out the purposes of this Act.

23 “(b) FILING COMPLAINTS AND PROCEDURES.—

24 “(1) FILING DEADLINE.—An employee alleging
25 a violation of subsection (a), or another person at

1 the employee's request, may file a complaint with
2 the Secretary of Labor not later than 365 days after
3 the alleged violation occurred.

4 “(2) PROCEDURES.—

5 “(A) INVESTIGATION; PRELIMINARY OR-
6 DERS.—Not later than 60 days after receiving
7 a complaint, the Secretary shall conduct an in-
8 vestigation, decide whether it is reasonable to
9 believe the complaint has merit, and notify the
10 complainant and the person alleged to have
11 committed the violation of the findings. If the
12 Secretary decides it is reasonable to believe a
13 violation occurred, the Secretary shall include
14 with the decision findings and a preliminary
15 order for the relief provided under paragraph
16 (3).

17 “(B) OBJECTIONS TO PRELIMINARY
18 ORDER.—Not later than 30 days after the no-
19 tice under subparagraph (A) of this paragraph,
20 the complainant and the person alleged to have
21 committed the violation may file objections to
22 the findings or preliminary order, or both, and
23 request a hearing on the record. The filing of
24 objections does not stay a reinstatement or-
25 dered in the preliminary order. If a hearing is

1 not requested within the 30 days, the prelimi-
2 nary order is final and not subject to judicial
3 review.

4 “(C) HEARING; FINAL ORDER; SETTLE-
5 MENT AGREEMENT.—A hearing shall be con-
6 ducted expeditiously. Not later than 120 days
7 after the end of the hearing, the Secretary shall
8 issue a final order. Before the final order is is-
9 sued, the proceeding may be ended by a settle-
10 ment agreement made by the Secretary, the
11 complainant, and the person alleged to have
12 committed the violation.

13 “(3) ORDER.—

14 “(A) PENALTIES.—If the Secretary de-
15 cides, on the basis of a complaint, a person vio-
16 lated subsection (a), the Secretary shall order
17 the person to—

18 “(i) take affirmative action to abate
19 the violation;

20 “(ii) reinstate the complainant to the
21 former position with the same pay and
22 terms and privileges of employment; and

23 “(iii) pay compensatory damages, in-
24 cluding back pay.

1 “(B) COSTS.—If the Secretary issues an
2 order under subparagraph (A) and the com-
3 plainant requests, the Secretary may assess
4 against the person against whom the order is
5 issued the costs (including attorney’s fees) rea-
6 sonably incurred by the complainant in bringing
7 the complaint. The Secretary shall determine
8 the costs that reasonably were incurred.

9 “(4) JUDICIAL REVIEW AND VENUE.—A person
10 adversely affected by an order issued after a hearing
11 under this subsection may file a petition for review,
12 not later than 60 days after the order is issued, in
13 the court of appeals of the United States for the cir-
14 cuit in which the violation occurred or the person re-
15 sided on the date of the violation. The review shall
16 be heard and decided expeditiously. An order of the
17 Secretary subject to review under this paragraph is
18 not subject to judicial review in a criminal or other
19 civil proceeding.

20 “(5) CIVIL ACTIONS TO ENFORCE.—If a person
21 fails to comply with an order issued under this sub-
22 section, the Secretary shall bring a civil action to en-
23 force the order in the district court of the United
24 States for the judicial district in which the violation
25 occurred.

1 “(c) BURDENS OF PROOF.—The legal burdens of
 2 proof with respect to a violation of subsection (a) shall
 3 be governed by the applicable provisions of sections 1214
 4 and 1221 of title 5, United States Code.

5 “(d) SUBPOENA AUTHORITY.—With respect to an al-
 6 leged violation of subsection (a), the Secretary of Labor
 7 may issue a subpoena for the attendance and testimony
 8 of any person and the production of documentary or other
 9 evidence from any person if the testimony or production
 10 requested is not unduly burdensome and appears reason-
 11 ably calculated to lead to the discovery of admissible evi-
 12 dence.

13 “(e) POSTING REQUIREMENT.—The provisions of
 14 this section shall be prominently posted in any place of
 15 employment to which this section applies.”.

16 **SEC. 12. ISSUANCE OF SUBPOENAS.**

17 Section 509(a)(1) of the Federal Water Pollution
 18 Control Act (33 U.S.C. 1369(a)(1)) is amended by strik-
 19 ing “obtaining information under section 305 of this Act,
 20 or carrying out section 507(e) of this Act,” and inserting
 21 “carrying out this Act,”.

22 **SEC. 13. JUDICIAL REVIEW OF EPA ACTIONS.**

23 Section 509(b)(1) of the Federal Water Pollution
 24 Control Act (33 U.S.C. 1369(b)(1)) is amended—

1 (1) by inserting after the comma at the end of
 2 clause (D) “including a decision to deny a petition
 3 by interested person to veto an individual permit is-
 4 sued by a State,”;

5 (2) by inserting after the comma at the end of
 6 clause (E) “including a decision not to include any
 7 pollutant in such effluent limitation or other limita-
 8 tion if the Administrator has or is made aware of in-
 9 formation indicating that such pollutant is present
 10 in any discharge subject to such limitation,”; and

11 (3) by striking “and (G)” and inserting the fol-
 12 lowing: “(G) in issuing or approving any water qual-
 13 ity standard under section 303(c) or 303(d), (H) in
 14 issuing any water quality criterion under section
 15 304(a), including a decision not to address any ef-
 16 fect of the pollutant subject to such criterion if the
 17 Administrator has or is made aware of information
 18 indicating that such effect may occur, and (J)”.

19 **SEC. 14. NATIONAL CLEAN WATER TRUST FUND.**

20 (a) IN GENERAL.—Title V of the Federal Water Pol-
 21 lution Control Act (33 U.S.C. 1361–1377) is amended by
 22 redesignating section 519 as section 520 and by inserting
 23 after section 518 the following new section:

1 **“SEC. 519. NATIONAL CLEAN WATER TRUST FUND.**

2 “(a) CREATION OF TRUST FUND.—There is estab-
3 lished in the Treasury of the United States a trust fund
4 to be known as the ‘Clean Water Trust Fund’.

5 “(b) TRANSFERS TO TRUST FUND.—There are here-
6 by appropriated to the Clean Water Trust Fund amounts
7 equivalent to the penalties collected under section 309 of
8 this Act and the penalties collected under section 505(a)
9 of this Act (excluding any amounts ordered to be used to
10 carry out mitigation projects under section 309 or 505(a),
11 as the case may be).

12 “(c) ADMINISTRATION OF TRUST FUND.—The Ad-
13 ministrator shall administer the Clean Water Trust Fund.
14 The Administrator may use moneys in the Fund to carry
15 out inspections and enforcement activities pursuant to this
16 Act. In addition, the Administrator may make such
17 amounts of money in the Fund as the Administrator de-
18 termines appropriate available to carry out title VI of this
19 Act.”.

20 (b) CONFORMING AMENDMENT TO STATE REVOLV-
21 ING FUND PROGRAM.—Section 607 of such Act (33
22 U.S.C. 1387) is amended—

23 (1) by inserting “(a) IN GENERAL.—” before
24 “There is”; and

25 (2) by adding at the end the following:

1 “(b) TREATMENT OF TRANSFERS FROM CLEAN
2 WATER TRUST FUND.—For purposes of this title,
3 amounts made available from the Clean Water Trust
4 Fund under section 519 of this Act to carry out this title
5 shall be treated as funds authorized to be appropriated
6 to carry out this title and as funds made available under
7 this title.”.

8 **SEC. 15. APPLICABILITY.**

9 Sections 101(h), 309(g)(6)(A), 505(a)(1), 505(b),
10 505(g), and 505(i) of the Federal Water Pollution Control
11 Act, as inserted or amended by this Act, shall be applica-
12 ble to all cases pending under such Act on the date of
13 the enactment of this Act and all cases brought on or after
14 such date of enactment relating to violations which oc-
15 curred before such date of enactment.

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